

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Criminal Appeal No.508-DB of 1999
Date of decision: 14.3.2008

Lakhwinder Singh and another.

-----Appellants.

Vs.

State of Punjab.

-----Respondent.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE S. D. ANAND

Present: Mr. Vinod S. Bhardwaj, Advocate
for appellants.

Mr. A.S. Jattana, Addl. Advocate General, Punjab.

Adarsh Kumar Goel, J.

The appellant Lakhwinder Singh challenges his conviction under Sections 302 IPC for the murder of Surjit Singh, for which he has been awarded life imprisonment and sentence of Rs.5,000/-, in default, to undergo further RI for six months. He has also been convicted under Sections 325/323 IPC and awarded other lesser sentences. All the sentences are to run concurrently with the life imprisonment.

Balwinder Singh was also one of the appellants who had been convicted under Sections 325/323 IPC but he is reported to have died and appeal qua him is dismissed as abated.

Joginder Singh and Kulwinder Singh, co-accused were also tried but acquitted by the trial Court.

We have, thus, to decide the appeal of Lakhwinder Singh only.

Case of the prosecution is that family of the deceased Surjit Singh had field adjacent to the field of the appellant. The appellant had installed a thrasher with electronic motor which emitted dust and *turi* harming the crop in the field of the deceased. On 13.5.1993 at 6-00 P.M., Harbans Singh PW-3 father of the deceased alongwith his son Amrik Singh PW-4 and the deceased Surjit Singh went to their field for cutting fodder. The appellant alongwith his brother Kulwinder Singh, Balwinder Singh and father Joginder Singh were also in their field and were operating the thrasher. The complainant party asked the accused to change the direction of their thrasher which was taken ill by the accused. The appellant hurled abuse and said that the direction of the thrasher will not be changed. Joginder Singh accused said that the complainant party be taught a lesson. Lakhwinder Singh appellant lifted a *sota dareke* lying near the thrasher, Balwinder Singh lifted one *sota Morhi dareke* and Kulwinder Singh lifted *Tarangli*. Lakhwinder Singh gave *sota dareke* (stick) blow on the head of Surjit Singh, on which he fell down. Harbans Singh intervened, on which Balwinder Singh

gave a blow to him. Kulwinder Singh also gave a blow to Harbans Singh. He raised alarm, on which the accused ran away. The accused also ran after Amrik Singh, but Amrik Singh escaped. The accused ran away from the spot with their weapons. Harbans Singh saw that Surjit Singh had already died. He left his wife Attar Kaur to safeguard the dead body and proceeded to inform the police alongwith his son Amrik Singh and met Sukhdev Singh, ASI PW-8, who recorded his statement Ex.PE, which led to registration of FIR.

PW-8 ASI Sukhdev Singh went to the place of occurrence. He prepared inquest report and rough site plan and sent the dead body for post-mortem examination. He arrested the accused and recovered stick Ex.PR/1.

Dr. Sat Pal PW-1 conducted post-mortem examination on the dead body of Surjit Singh on 14.5.1993 at 12-45 P.M. and found following injuries:-

- “1. 12 cm x 8 cm red colour contusion over the right parietal and temporal region of the skull. On dissection, the underlying haematoma was present in the subcutaneous region. Underlying parietal and temporal bone were fractured (linear fracture). The dura underneath the fracture underside lacerated. Blood and blood clots were present in the right cranial cavity. Blood and blood clots were also present at the level of medulla oblongata and

the medulla oblongata was lacerated. There

was also fracture of the middle cranial fossa (basel fracture)".

In his opinion, the cause of death was injury to brain which was sufficient to cause death in the ordinary course of nature. After completing investigation, the accused was challaned.

The prosecution examined PW-1 Dr. Sat Pal, PW-2 Dr. R.K. Attari, PW-3 Harbans Singh, PW-4 Amrik Singh, PW-5 Prem Kumar, PW-6 Rattan Singh, Patwari, PW-7 C. Balwant Rai and PW-8 ASI Sukhdev Singh.

In their statements under Section 313 Cr.P.C., the accused denied the prosecution allegations. Joginder Singh took the plea that he was posted as Patwari and at the relevant time, he was on his duty. Balwinder Singh took the plea that at the time of occurrence, he was all alone and he was assaulted by Harbans Singh and Surjit Singh. In private defence, he picked up and used the stick. Lakhwinder Singh and Kulwinder Singh were not present. On account of brother of the deceased Rachhpal being in police, false case was registered.

The trial Court after considering the evidence on record, accepted the case of the prosecution against the appellant. It was held that the occurrence took place on the spur of the moment and there was no intention or pre-meditation. Accordingly, the accused Joginder Singh and

Kulwinder Singh were acquitted. Balwinder Singh was acquitted of the charge of common intention for cause death. Lakhwinder Singh has been convicted under Section 302.

We have heard learned counsel for the parties and perused the record.

Learned counsel for the appellant submitted that there was no motive on the part of the appellant. The occurrence took place at the spur of the moment and the accused picked up the stick readily available. He caused only single injury. Balwinder Singh owned the only injury found. PW-3 Harbans Singh and PW-4 Amrik Singh were brother and father of the deceased and were not independent witnesses. Their evidence should not be accepted. In any case, the offence should be held to fall under Section 304-II IPC. He placed reliance on **Ujjagar Singh v. State of Punjab (P&H)** 1997(1) RCR (Criminal) 224, **Sumer Chand v. State of Haryana** 1998(1) RCR (Criminal) 399, **Sekar @ Raja Sekharan v. State rep. by Inspector of Police (SC)** 2002(4) RCR (Criminal) 477, **Mahesh Balmiki @ Munna v. State of Madhya Pradesh (SC)** 1999(4) RCR (Criminal) 91, **Ram Prakash Singh v. State of Bihar (SC)** AIR 1998 SC 1190 and **Masumsha Hasanasha Musalman v. State of Maharashtra (SC)** 2000(2) RCR (Criminal) 116.

We have not been able to accept any of the submissions.

Reference to the evidence on record shows that the case of the prosecution is fully established and there is no discrepancy therein. The offence will fall under Section 302 IPC.

PW-3 Harbans Singh is the father of the deceased. Father of the deceased will be the last person to screen the real culprit and falsely substitute the appellant. The trial Court has already given benefit of doubt to the co-accused to safeguard against any possible exaggeration. As far as the appellant is concerned, evidence against him is categorical that he caused the head injury, resulting in death. The evidence of the relation eyewitnesses cannot be rejected only on that ground. The occurrence took place at 6-00 P.M. in the month of May. There could be no dispute of identity. The causing of assault by the appellant is corroborated by medical evidence. Presence of witnesses at the place of occurrence is natural and probable. FIR was promptly recorded. Non-recovery of weapon of offence can at best be held to be defect of investigation. Testimony of PW-3 Harbans Singh and PW-4 Amrik Singh has remained unshaken in the cross-examination. It is not required to establish motive as an ingredient of offence. Quarrel of parties on trifles is not unknown. Even a serious offence may be committed for a trivial reason. Suddenness of occurrence may be a ground to hold that there is no common intention or may be a mitigating circumstance for sentence, it is not a ground to alter the nature of offence. A single injury is not always a ground to

hold that offence of murder was not proved. The case does not fall in any of the exceptions of Section 300 IPC. Even if there is no intention to cause death, offence clearly falls under Clause IIIrdly of Section 300 IPC. Thus, the offence of murder is established. Sudden occurrence cannot be equated to sudden fight. Fight postulates a bilateral transaction. The seat of injury and nature of weapon and the manner of occurrence give rise to inference that the injury was intentional. According to medical evidence, the injury was sufficient to cause death in the ordinary course of nature. In **State of Rajasthan v. Dhool Singh** AIR 2004 SC 1264, the principle that a single blow by itself is not enough to hold that the offence was culpable homicide, not amounting to murder, has been reiterated. Approach for determining whether the offence amounted to murder or culpable homicide not amounting to murder has been laid down, inter-alia in **Virsa Singh v. State of Punjab** AIR 1958 SC 465, **Rajwant Singh v. State of Kerala** AIR 1966 SC 1874, **Anda v. State of Rajasthan** AIR 1966 SC 148 and **State of A.P. v. Rayavarapu Punnayya** AIR 1977 SC 45. Burden of proof of existence of right of private defence is on the accused, though the same can be proved from the evidence on record by probabilities. The appellant did not take the plea of right of private defence. The acquitted co-accused took the said plea. The version of the PWs has already been held to be reliable.

There is nothing to negative the said version. There is nothing to substantiate the plea of private defence. Reference may be made to the judgment of the Hon'ble Supreme Court in **State of Madhya Pradesh v. Ramesh** AIR 2005 SC 1186, reiterating the parameters for determining whether the accused can be held to be having right of private defence.

Judgments relied upon on behalf of the appellant are distinguishable. In **Ujjagar Singh** (*supra*), it was held that the injury found was not intentional, which is not the situation in the present case. In **Sumer Chand** (*supra*), it was held that nexus of injury and the death was not established. In **Sekar @ Raja Sekharan** (*supra*), plea of private defence was upheld. In **Mahesh Balmiki @ Munna** (*supra*), plea of sudden fight was upheld. In **Ram Prakash Singh** (*supra*), the accused and the deceased were friends and the injury was not aimed at the place where it landed and it was not clear that the same was sufficient to cause death in the ordinary course of nature. In **Masumsha Hasanasha Musalman** (*supra*), version of eyewitness was rejected and after considering the probabilities, it was observed that the injury was caused during scuffle. Facts of present case being different, the judgments relied upon are not applicable.

We, thus, do not find any infirmity in the case of the prosecution.

Conviction and sentence of the appellant is upheld.

The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

March 14, 2008
ashwani

(S. D. ANAND)
JUDGE